

FERC Approves Region-Wide Allocation of Transmission Costs under Specific Circumstances

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In two recent rehearing orders, the Federal Energy Regulatory Commission (FERC) addressed the controversial issue of who should pay for new electric transmission capacity that is needed to provide a reliable flow of electricity and to support increased use of renewable generation resources that often must be sited in remote locations. The Midwest Independent Transmission System Operator, Inc. (MISO) and the Southwest Power Pool, Inc. (SPP) each proposed cost allocation methods to FERC for the transmission facilities they operate within their respective multi-state regions. The two plans were quite different from each other, and each received vigorous rehearing requests of the original orders approving them. Nonetheless, FERC reaffirmed its prior approvals and more fully interpreted cost allocation principles.

There is considerable debate about the appropriate method to allocate costs for new transmission lines. Some argue that major transmission lines benefit every electric customer in a region, and hence their costs should be paid by every customer in the region. Others argue that only generators or customers that directly benefit from the addition of a specific transmission facility should pay for it. The debate has been sharpened in the context of new renewable generation resources that must be built to satisfy state-mandated standards, and which often must be sited where there are no existing transmission lines.

In Aug. 2011, FERC addressed this debate when it issued its [Order No. 1000](#), a rulemaking requiring all public utility transmission owners to join in a regional transmission planning effort that would adopt a cost allocation method for new transmission facilities needed in the region. According to Order No. 1000, costs of new transmission must be allocated “at least roughly commensurate with estimated benefits,” taking into account the extent a transmission facility provides for maintaining reliability and sharing reserves, production cost savings, congestion relief, and meeting “Public Policy Requirements” such as state or federal resource mandates. Order No. 1000 prescribed principles, but not details, as to what these cost allocation plans must look like. Utilities must tell FERC by October 2012 how they intend to implement cost allocation methods.

While Order No. 1000 was under development at FERC, MISO and SPP had their own specific proposals for cost allocation pending at FERC. FERC’s [Oct. 20, 2011 SPP order](#) and its [Oct. 21, 2011 MISO order](#) shed some light on what FERC deems just and reasonable. The more complicated and contested of the two proposals was that of MISO, which operates transmission across all or parts of 12 states. Participants in MISO engaged in lengthy stakeholder discussions to develop its Multi- Value Project (MVP) proposal for cost allocation.

Under the MVP Proposal, once a transmission expansion project qualifies as an MVP, all costs of that project are allocated to all transmission customers in the MISO region, and to power exports, by means of a prospective per-MWh usage charge. However, the charge would not be applied to exports that sink in the PJM Interconnection so as not to affect FERC's previous elimination of rate pancaking between MISO and PJM.

In order to qualify as an MVP, the project must be over 100kV, have a capital cost of \$20 million or more, be a new project, and be approved by the MISO Board. In addition, the project must meet one of three criteria as to its function: (1) it must have a purpose of reliably and economically delivering energy in support of "documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation;" (2) it must provide multiple types of economic value across multiple pricing zones with a "Total MVP Benefit-to-Cost Ratio" of 1.0 or higher; or (3) it must address at least one transmission reliability issue and at least one economic-based transmission Issue that provides economic value across multiple pricing zones.

FERC's original order approving the MVP Proposal was challenged on rehearing with respect to almost every aspect of the proposal. A large portion of the challenges were based on the contention that spreading upgrade costs among all MISO customers was not consistent with cost causation principles, i.e., that some customers would be required to pay for transmission facilities from which they derived no benefit. These challengers cited to the 2009 Seventh Circuit Court of Appeals case of *Illinois Commerce Commission v. FERC* that struck down an earlier FERC order that approved cost socialization in another context, which, the challengers asserted, required that benefits to a customer must be "at least roughly commensurate" with the costs imposed. FERC accepted the "roughly commensurate" principle, but held that MVP allocation satisfied it.

Significantly, FERC rejected arguments that MISO must specifically look at each individual utility zone to see if the customers there would derive benefits from specific projects. FERC cited court cases approving a broad allocation of costs on a transmission network based on the more generalized presumption that all customers on an integrated network benefit from certain upgrades. FERC held that "the question becomes not whether the MVP Proposal matches costs to benefits on a utility-by-utility basis, but whether it will provide sufficient benefits to the entire Midwest ISO region to justify a regional allocation of costs."

FERC stated that customers within an integrated system such as MISO may experience differing benefits with respect to specific projects and over time, but "[t]oo granular a focus would undermine the benefits and advantages provided by membership in Midwest ISO." In addition, FERC noted that even if benefits could be quantified on a zone by zone basis, the benefit calculus would change over time as the network evolved. FERC did grant a request for rehearing on the need for a triennial analysis by MISO of the costs and benefits of MVP projects.

With respect to network upgrades associated with generator interconnections, FERC approved MISO's proposal to make permanent its earlier method under which generators would be responsible for most or all of the costs of required network upgrades. FERC rejected arguments that generators should be allocated some MVP costs, but also rejected wind generators' arguments that all interconnection upgrades should be socialized. FERC did allow, however, that interconnection network upgrades could be determined to be MVP Projects if they otherwise met MVP criteria.

The SPP cost allocation proposal, known as the "Highway/Byway Methodology," is relatively simple compared to the MISO proposal, because it determines regional/local allocation issues based on the voltage of the facility. SPP's allocation methodology would apply to "Base Plan Upgrades," which generally are defined as reliability and economic upgrades included in the SPP transmission plan, and certain wind generation network upgrades. These Base Plan Upgrade costs would be allocated as follows: (1) the costs of facilities operating at 300 kV and above would be allocated to all transmission customers across the SPP region on a "postage stamp" basis; (2) the costs of facilities operating between 100 kV and 300 kV would be allocated 33% to the entire SPP region and 67% to the SPP pricing zone in which the facilities are located; and (3) the costs of facilities operating at or below 100 kV would be allocated 100 percent to the SPP zone in which the facilities are located. Wind generation network upgrade costs can be allocated up to 100% to the region, depending on the location of the upgrade and point of delivery, and the voltage of the upgrade.

Those requesting rehearing of the original FERC order approving the SPP plan argued, similarly to the arguments in the MISO case, that regional allocation violated cost causation principles. FERC again held that the SPP allocation satisfied cost causation principles, and used the same rationale it did in the MISO order. FERC said "[r]equiring a utility-by-utility or a zone-by-zone analysis of costs and benefits for new transmission facilities subject to cost allocation under the Highway/Byway Methodology would be inconsistent with the regional nature of regional transmission organizations." SPP proposed and FERC accepted a three-year review process as to how the allocation is working, and provided other ways to appeal the impacts of the allocation method.

The MISO and SPP orders are significant in that they illuminate what FERC finds acceptable for cost allocation methodologies. Although FERC claimed in both orders that it was not prejudging the Order No. 1000 compliance filings due next year, FERC clearly gave the message to utilities working on their Order No. 1000 compliance plans that regional cost sharing is acceptable without a detailed utility-by-utility analysis of costs and benefits. It also shows that, at least within transmission systems integrated under common operator control, it will be difficult for an individual utility to prove that it has no benefit from a major transmission facility built within the region. Given the extensive opposition to the two proposals, it is likely that one or both of FERC's orders will be appealed to court.

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